

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Miguel Lopez,

Case No. 1:11CV2534

Petitioner

v.

ORDER

Richard Gansheimer, Warden,

Respondent

This is a habeas corpus proceeding under 28 U.S.C. § 2254. Petitioner, convicted and sentenced on felonious assault and related counts following a no contest plea, claims, *inter alia*, that he received ineffective assistance of counsel during a direct appeal of the denial of motion to withdraw that plea. Among other alleged failings, counsel failed to file necessary transcripts to enable petitioner to perfect a state court appeal.

The Magistrate Judge has filed a report and recommendation recommending that the writ be granted conditionally. (Doc. 24). The respondent has not filed an objection, and the time for doing so has lapsed.

I have reviewed the Magistrate Judge's Report and Recommendation *de novo*. I find the Report and Recommendation well taken. It is, accordingly,

ORDERED THAT:

1. The Magistrate Judge's Report and Recommendation (Doc. 24) be, and the same hereby is adopted as the Order of this Court;
2. The petition for a writ of habeas corpus be, and the same hereby is granted conditionally;
3. The Respondent shall release the petitioner from prison unless the petitioner is granted leave to reopen his appeal pursuant to Ohio Rule of Appellate Procedure 5(B) with court appointed counsel within ninety (90) days of the filing of a motion to reopen;
4. The Ohio Ninth District Court of Appeals or other duly authorized agency shall within two weeks of the date of this order appoint capable counsel at state expense, or cause such counsel to be appointed for petitioner's state court appeal; and
5. The Clerk shall serve a copy of this Order and the Magistrate Judge's Report and Recommendation on the Clerk, Ohio Ninth District Court of Appeals.

So ordered

/s/ James G. Carr
Sr. United States District Judge